

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

UNITED STATES OF AMERICA, )  
                                  )  
Plaintiff,                    )  
                                  ) Case No. 05-3494-CV-S-FJG  
vs.                            )  
                                  )  
VITA-ERB, LTD., et al.,     )  
                                  )  
Defendants.                 )

**ORDER**

Pending before the Court is defendant Fred R. Pulicka's motion to quash (Doc. No. 8).

Defendant Pulicka asserts that he was not properly personally served with process in this action pursuant to Rule 4 of the Federal Rules of Civil Procedure. In particular, defendant Pulicka notes that a copy of the summons and complaint was left with defendant Moses R. Barnes at defendant Vita-Erb's place of business. However, defendant Pulicka asserts that he is not an owner or employee of Vita-Erb, gave no authority to defendant Moses R. Barnes to accept service of process on his behalf, and does not reside in the state of Missouri or at the address where service was attempted. Plaintiff filed no response to the pending motion.

To meet the requirements of the Federal Rules of Civil Procedure and Missouri law, personal service on the defendant must be made in order to effectuate proper service. See Fed. R. Civ. P. 4(e); R.S.Mo. § 506.150. This does not appear to have been done in this matter.

Defendant Pulicka argues that the Court should either dismiss this action or quash service. The Eighth Circuit has held that “[d]ismissal [is not] invariably required where service is ineffective: under such circumstances, the court has discretion to either dismiss the action, or quash service but retain the case.” See Haley v. Simmons, 529 F.2d 78, 79 (8th Cir. 1976). See also Marshall v. Warwick, 155 F.3d 1027, 1032 (8th Cir. 1998). As the time limit for effectuating service of the complaint has not yet expired, the Court finds that quashing service but retaining the case against defendant Pulicka is the appropriate course of action.

Consequently, it is hereby **ORDERED** that defendant Pulicka’s motion to quash service (Doc. No. 8) is **GRANTED** and defendant Pulicka’s motion to dismiss is **DENIED**.

**IT IS SO ORDERED.**

/s/ FERNANDO J. GAITAN, JR.  
Fernando J. Gaitan, Jr.  
United States District Judge

Dated: January 9, 2006.  
Kansas City, Missouri.